

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The Officer in Charge

Police Station,

Puttalam.

**Complainant**

Case No: CA (PHC) 223/2006

PHC Chilaw Case No: HCR/02/2004

**Vs.**

Primary Court Puttalam Case No: 90796/P

1. S.L.M. Naim

No.17, Kurunegala Road,

Puttalam.

**1<sup>st</sup> Party Respondent**

2. Mohammed Naina Marikkar Haseeb

No.223, North Road,

Puttalam.

**2<sup>nd</sup> Party Respondent**

**AND**

In the matter of an Application in  
terms of Article 154P of the  
Constitution read with the High  
Court of the Provinces (Special  
Provisions) Act.

S.L.M Naim  
No.17, Kurunegala Road,  
Puttalam.

**1<sup>st</sup> Party Respondent- Petitioner**

**Vs.**

1. Mohammed Naina Marikkar Haseeb  
No.223, North Road,  
Puttalam.

**2<sup>nd</sup> Party Respondent-Respondent**

2. The Hon. Attorney General  
The Attorney General's Department,  
Colombo 12.

**Respondent**

**AND NOW**

In the matter of an Application in  
terms of Article 154P of the  
Constitution read with the High  
Court of the Provinces (Special  
Provisions) Act.

S.L.M Naim  
No.17, Kurunegala Road,  
Puttalam.

**1<sup>st</sup> Party Respondent- Petitioner-  
Appellant**

**Vs.**

1. Mohammed Naina Marikkar Haseeb  
No.223, North Road,  
Puttalam.

**2<sup>nd</sup> Party Respondent-Respondent-Respondent**

2. The Hon. Attorney General  
The Attorney General's Department,  
Colombo 12.

**Respondent-Respondent**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

Chanaka Kulathunga with Randima Tennakoon for 1<sup>st</sup> Party Respondent-Petitioner-Appellant

Sumedha Mahawanniarachchi for 2<sup>nd</sup> Party Respondent-Respondent-Respondent

**Written Submissions tendered on:**

1<sup>st</sup> Party Respondent-Petitioner-Appellant on 28.09.2018, 30.10.2018 and 11.02.2019

2<sup>nd</sup> Party Respondent-Respondent-Respondent on 02.10.2018, 13.11.2018 and 18.02.2019

**Argued on:** 02.10.2018

**Decided on:** 28.02.2019

**Janak De Silva J.**

This is an appeal against the order of the learned High Court Judge of the North Western Province holden in Chilaw dated 12.09.2006.

This appeal arises from proceedings instituted under section 66(1)(a) of the Primary Courts Procedure Act. After inquiry the learned Magistrate by order dated 19.11.2003 gave possession of the land in dispute to the 2<sup>nd</sup> Party Respondent-Respondent-Respondent (Respondent). The 1<sup>st</sup> Party Respondent-Petitioner-Appellant (Appellant) filed a revision application in the High Court of the North Western Province holden in Chilaw. Notice was issued on parties.

On 02.06.2005 the Respondent raised three preliminary objections including one on the validity of the affidavit filed by the Appellant on the basis that the place of attestation was not mentioned in the jurat. The learned High Court Judge upheld this preliminary objection and dismissed the petition without making any determination on the merits of the revision application. Hence this appeal by the Appellant.

After the matter was argued and parties filed written submissions, we reserved judgment. Later, we called upon both parties to tender further written submissions on whether the Appellant could have invoked the appellate jurisdiction of this Court in terms of Article 154(P)(6) of the Constitution as it was a jurisdictional issue and the merits of the application needs to be considered only if this Court was vested with jurisdiction.

Article 154P (6) of the Constitution reads:

*"Subject to the provisions of the Constitution and any law, any person aggrieved by a **final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138"***

Thus, the right of appeal conferred by this constitutional provision is only in respect of final orders, judgments or sentences imposed by a Provincial High Court exercising either its appellate or revisionary jurisdiction. The question therefore is whether the order of the learned High Court Judge of the North Western Province holden in Chilaw dated 12.09.2006 is a final

order, entitling the Appellant to invoke this court's appellate jurisdiction relying on Article 154P (6) of the Constitution.

In Sri Lanka, the method of determining whether an order of a civil court is a final order or interlocutory order had given rise to two conflicting strands of judicial opinion. In *Siriwardena v. Air Ceylon Ltd.* [(1984) 1 Sri L.R. 286] the Supreme Court adopted a test known as the 'order approach' to answer this question. In essence, the test was whether the order of the Court finally disposed of the rights of the parties. If an order did so, it could be regarded as a final order. The rival strand of authority adopted a test known as the 'application approach'.

This approach is succinctly explained in the following judicial statements made in *Salaman v. Warner* [(1891) Q.B.D. 734]:

***"I think that the true definition is this. I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined."***

The application approach which was initially adopted by a three-judge bench of the Supreme Court in *Ranjit v Kusumawathi* [(1998) 3 Sri L.R. 232], has subsequently been followed in *Rajendra Chettiar vs. Narayanan Chettiar* [(2011) 2 SLR 70] (5 judge bench) and SC. Appeal No. 41/2015 and SC/CHC Appeal 37/2008 (S.C.M 04.08.2017) (7 judge Bench).

Admittedly, the aforementioned tests have been used to decide whether an order of a court governed by the Civil Procedure Code is a final or interlocutory order. However, in *Patirana v. Goonawardena and others* [CA (PHC) 15/2016, C.A.M 14.07.2016] the application approach was applied by a divisional bench of this court (Dehideniya J. with Walgama J. agreeing) in order to determine whether an order of a Provincial High Court exercising its revisionary jurisdiction against an order of a Primary Court was a final or interlocutory order.

In *Patirana v. Goonawardena and others* (supra) this court had to decide whether an order of a Provincial High Court refusing to issue notice was a final or interlocutory order. This Court observed that the order of the High Court was made upon an application by the petitioner to issue notice on the respondents. It was held that although the order refusing to issue notice on the respondents finally determined the matter, if the High Court decided to issue notice, the matter would not have been finally determined. On this basis, this Court regarded an order refusing to issue notice as an interlocutory order that did not come within the scope of Article 154P (6) of the Constitution.

We are inclined to adopt the approach taken in *Patirana v. Goonawardena and others* (supra) and determine that the order of the High Court Judge of the North Western Province holden in Chilaw dated 12.09.2006 is an interlocutory order. If the learned High Court Judge overruled the preliminary objections the merits of the application were left to be determined.

We are fortified in coming to this conclusion having regard to the following unreported decisions as well. In *Neththikumara v. OIC Thalangama Police Station and others* [CA (PHC) APN 21/2016, C.A.M. 2017.08.03], an order of a Provincial High Court refusing to issue notice in the exercise of its revisionary jurisdiction was challenged by invoking the revisionary jurisdiction of this Court. In *Abbas v. Brown and Company PLC* [CA (PHC) APN 77/2015, C.A.M 03.03.2016] a stay order issued by a Provincial High Court – being an order of an interlocutory nature – was challenged before this Court by way of revision.

Accordingly, the Appellant is not entitled to invoke the appellate jurisdiction of this Court against an interlocutory order of a Provincial High Court. The Appellant ought to have challenged the order dismissing the revision application for the alleged defective affidavit by invoking the revisionary jurisdiction of this court.

For the aforementioned reasons we dismiss this appeal without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal